

1 (Counsel for the parties listed on next page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 THOMAS DALTON,

No. C 10-05305 PJH

Plaintiff,

**STIPULATED PROTECTIVE
ORDER AND CONFIDENTIALITY
AGREEMENT**

14 UNITED PARCEL SERVICE, INC., an Ohio
15 Corporation; AMERICAN SUBSTANCE
16 ABUSE PROFESSIONALS, INC., a Maryland
17 Corporation; JERRY MATTES, an individual;
MARY SUE ALLEN, an individual; HAIDEE
LAGUNDAY, an individual; and DOES 1
through 50, inclusive,

Defendants.

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2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production
4 of confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the court to enter the following
7 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
8 protections on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are entitled to
10 confidential treatment under the applicable legal principles. The parties further acknowledge, as
11 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from the court to
14 file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation
17 of information or items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for protection under
20 Federal Rule of Civil Procedure 26(c) or implicate a party or non-party's constitutional right to
21 privacy.

22 2.3 "HIGHLY CONFIDENTIAL" Information or Items: information
23 (regardless of how it is generated, stored or maintained) or tangible things that qualify for
24 protection as sealable under Civil Local Rule 79-5.

25 2.4 Counsel (without qualifier): Outside Counsel of Record and House
26 Counsel (as well as their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as "HIGHLY
3 CONFIDENTIAL" or "CONFIDENTIAL."

4 2.6 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including, among other
6 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
7 or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
10 witness or as a consultant in this action.

11 2.8 House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside counsel.

13 2.9 Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.

15 2.10 Outside Counsel of Record: attorneys who are not employees of a party
16 to this action but are retained to represent or advise a party to this action and have appeared in
17 this action on behalf of that party or are affiliated with a law firm which has appeared on behalf
18 of that party.

19 2.11 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their support
21 staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
26 organizing, storing, or retrieving data in any form or medium) and their employees and
27 subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL."

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only Protected
7 Material (as defined above), but also (1) any information copied or extracted from Protected
8 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
9 testimony, conversations, or presentations by Parties or their Counsel that might reveal
10 Protected Material. However, the protections conferred by this Stipulation and Order do not
11 cover the following information: (a) any information that is in the public domain at the time of
12 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
13 Receiving Party as a result of publication not involving a violation of this Order, including
14 becoming part of the public record through trial or otherwise; and (b) any information obtained
15 by the Receiving Party after the disclosure from a source who obtained the information lawfully
16 and under no obligation of confidentiality to the Designating Party. Any use of Protected
17 Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
21 writing or a court order otherwise directs. Final disposition shall be deemed to be the later of
22 (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
23 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials,
24 or reviews of this action, including the time limits for filing any motions or applications for
25 extension of time pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.
28 Each Party or Non-Party that designates information or items for protection under this Order

1 must take care to limit any such designation to specific material that qualifies under the
2 appropriate standards. The Designating Party must designate for protection only those parts of
3 material, documents, items, or oral or written communications that qualify – so that other
4 portions of the material, documents, items, or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
8 unnecessarily encumber or retard the case development process or to impose unnecessary
9 expenses and burdens on other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must promptly
12 notify all other Parties that it is withdrawing the mistaken designation.

13 5.2. Manner and Timing of Designations. Except as otherwise provided in
14 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
15 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be
16 clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that
20 the Producing Party affix the legend “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” to
21 each page that contains protected material. If only a portion or portions of the material on a
22 page qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has indicated
26 which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed “HIGHLY
28 CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and

1 produced, the Producing Party must determine which documents, or portions thereof, qualify for
2 protection under this Order. Then, before producing the specified documents, the Producing
3 Party must affix the "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL" legend to each page
4 that contains Protected Material. If only a portion or portions of the material on a page qualifies
5 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
6 making appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial
8 proceedings, that the Designating Party identify on the record, before the close of the deposition,
9 hearing, or other proceeding, all protected testimony.

10 (c) for information produced in some form other than documentary
11 and for any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information or item is stored the legend
13 "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL." If only a portion or portions of the
14 information or item warrant protection, the Producing Party, to the extent practicable, shall
15 identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party's right to secure protection under this Order for such material. Upon timely
19 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
20 material is treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time whether for purposes of removing the designation or
24 seeking a different designation. Unless a prompt challenge to a Designating Party's
25 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
26 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive
27 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
28 after the original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging and
3 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been
4 made, the written notice must recite that the challenge to confidentiality is being made in
5 accordance with this specific paragraph of the Protective Order. The parties shall attempt to
6 resolve each challenge in good faith and must begin the process by conferring directly (in voice
7 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
8 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
9 the confidentiality designation was not proper and must give the Designating Party an
10 opportunity to review the designated material, to reconsider the circumstances, and, if no change
11 in designation is offered, to explain the basis for the chosen designation, including the legal
12 authority supporting the designation of any "HIGHLY CONFIDENTIAL" material as
13 "privileged or protectable as a trade secret or otherwise entitled to protection under the law,"
14 consistent with Civil Local Rule 79-5. Furthermore, the Challenging Party must identify
15 whether its concern could be resolved through the use of redactions. A Challenging Party may
16 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
17 process first or establishes that the Designating Party is unwilling to participate in the meet and
18 confer process in a timely manner.

19 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
20 court intervention, the Designating Party shall file and serve a motion to retain or designate
21 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
22 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
23 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
24 Each such motion must be accompanied by a competent declaration affirming that the movant
25 has complied with the meet and confer requirements imposed in the preceding paragraph.
26 Failure by the Designating Party to make such a motion including the required declaration
27 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
28 designation for each challenged designation. In addition, the Challenging Party may file a

1 motion challenging a confidentiality designation at any time if there is good cause for doing so,
2 including a challenge to the designation of a deposition transcript or any portions thereof. Any
3 motion brought pursuant to this provision must be accompanied by a competent declaration
4 affirming that the movant has complied with the meet and confer requirements imposed by the
5 preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
8 harass or impose unnecessary expenses and burdens on other parties) may expose the
9 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
10 designation by failing to file a motion to retain confidentiality as described above, all parties
11 shall continue to afford the material in question the level of protection to which it is entitled
12 under the Producing Party's designation until the court rules on the challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this case only for
16 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
17 disclosed only to the categories of persons and under the conditions described in this Order.
18 When the litigation has been terminated, a Receiving Party must comply with the provisions of
19 section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons authorized
22 under this Order.

23 7.2 Disclosure of "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL"
24 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item designated
26 "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as
28 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this litigation and who have signed the "Acknowledgment and
2 Agreement to Be Bound" that is attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel)
4 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
5 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
8 and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial
11 consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
12 for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
13 (Exhibit A);

14 (f) Any mediator, arbitrator, or other alternate dispute resolution
15 facilitator retained for this litigation;

16 (g) during their depositions, witnesses in the action to whom
17 disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement
18 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
19 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
20 Material must be separately bound by the court reporter and may not be disclosed to anyone
21 except as permitted under this Stipulated Protective Order.

22 (h) the author or recipient of a document containing the information
23 or a custodian or other person who otherwise possessed or knew the information.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation that
27 compels disclosure of any information or items designated in this action as "HIGHLY
28 CONFIDENTIAL" or "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1 1. promptly notify in writing the Requesting Party and the Non-Party
 2 that some or all of the information requested is subject to a confidentiality agreement with a
 3 Non-Party;

4 2. promptly provide the Non-Party with a copy of the Stipulated
 5 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
 6 description of the information requested; and

7 3. make the information requested available for inspection by the
 8 Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this court
 10 within 14 days of receiving the notice and accompanying information, the Receiving Party may
 11 produce the Non-Party's confidential information responsive to the discovery request. If the
 12 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
 13 information in its possession or control that is subject to the confidentiality agreement with the
 14 Non-Party before a determination by the court.¹ Absent a court order to the contrary, the Non-
 15 Party shall bear the burden and expense of seeking protection in this court of its Protected
 16 Material. Nothing in this Stipulated Protective Order limits a Party's right to redact non-
 17 responsive or irrelevant information to protect third-party privacy interests, including but not
 18 limited to, redaction of protected medical information.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 21 Protected Material to any person or in any circumstance not authorized under this Stipulated
 22 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
 23 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies
 24 of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures

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 26
 27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
 28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
 interests in this court.

1 were made of all the terms of this Order, and (d) request such person or persons to execute the
 2 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
 6 inadvertently produced material is subject to a claim of privilege or other protection, the
 7 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
 8 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
 9 an e-discovery order that provides for production without prior privilege review. Pursuant to
 10 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect
 11 of disclosure of a communication or information covered by the attorney-client privilege or
 12 work product protection, the parties may incorporate their agreement in the stipulated protective
 13 order submitted to the court.

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 16 person to seek its modification by the court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 18 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 19 producing any information or item on any ground not addressed in this Stipulated Protective
 20 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 21 the material covered by this Protective Order.

22 12.3 Filing Protected Material. Without written permission from the
 23 Designating Party or a court order secured after appropriate notice to all interested persons, a
 24 Party may not file in the public record in this action any material designated as "HIGHLY
 25 CONFIDENTIAL". A Party that seeks to file under seal any material designated as "HIGHLY
 26 CONFIDENTIAL" must comply with Civil Local Rule 79-5. Material designated as "HIGHLY
 27 CONFIDENTIAL" may only be filed under seal pursuant to a court order authorizing the
 28 sealing of the specific material designated as "HIGHLY CONFIDENTIAL." \ Pursuant to

1 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
2 material designated as "HIGHLY CONFIDENTIAL" at issue is privileged, protectable as a
3 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
4 file material designated as "HIGHLY CONFIDENTIAL" under seal pursuant to Civil Local
5 Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the
6 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

7 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,
8 as defined in paragraph 4, each Receiving Party must return all Protected Material to the
9 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
10 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
11 capturing any of the Protected Material. Whether the Protected Material is returned or
12 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
13 not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
14 (by category, where appropriate) all the Protected Material that was returned or destroyed and
15 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries or any other format reproducing or capturing any of the Protected Material.
17 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
18 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain Protected Material. Any such archival copies that
21 contain or constitute Protected Material remain subject to this Protective Order as set forth in
22 Section 4 (DURATION).

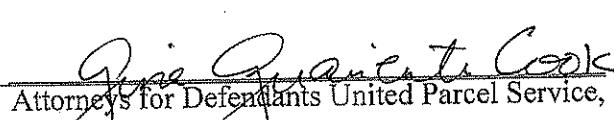
23
24 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

25 DATED: March 9, 2011



Attorneys for Plaintiff Thomas Dalton

26
27 DATED: 3-9-11



Attorneys for Defendants United Parcel Service,

1 Inc., Jerry Mattes, Mary Sue Allen, and Haidee
2 Lagunday

3 DATED: March 11, 2011

4
5 Atorneys for Defendant American Substance
6 Abuse Professionals, Inc.

Carla K. Rethke

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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9 DATED: 3/16/11

10 United States District Court for the Judge
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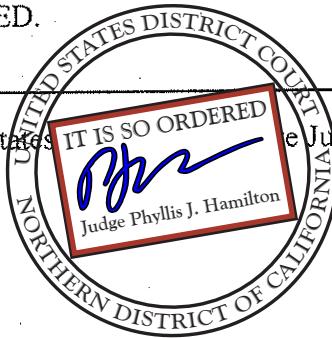


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [print or type full name], of
[print or type full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Northern District of California on _____ in the case of *Thomas*
Dalton v. United Parcel Service, Inc., et al., Case No. C 10-05305 PJH. I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

21 Date:

22 City and State where sworn and signed:

23 Printed name: _____
[printed name]

25 Signature: _____
[signature]